McCARTER &ENGLISH
ATTORNEYS AT LAW

December 30, 2011

The Honorable Michael C. Tetreau
First Selectman
Town of Fairfield
Sullivan Independence Hall
725 Old Post Road
Fairfield, CT 06824

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Re: Supplemental Report to Legal Analysis Dated September 30, 2011

Dear Mr. Tetreau:

In this letter, we address questions posed to us by Board of Selectmen ("BOS") concerning whether the 2010 Binding Letter Agreement ("Binding Letter Agreement") is binding on the Town given our conclusions (conveyed in our letter dated September 30, 2011) regarding former First Selectman Ken Flatto's lack of authority to enter into the Agreement without approval of the BOS, the Board of Finance ("BOF"), and the Representative Town Meeting ("RTM"). This letter is prompted in part by newly disclosed information regarding representations to the State of Connecticut Department of Transportation in 2010 regarding the Binding Letter Agreement.



## Facts

The relevant facts leading up to Mr. Flatto's signing the Binding Letter Agreement are set forth in our September 30, 2011 letter.

We previously concluded that the Binding Letter Agreement was not submitted to Town bodies, including the BOS. We based our conclusion on the fact that Mr. Flatto represented several times in writing that the Binding Letter Agreement was never disclosed to Town bodies (see September 30, 2011 Analysis, pp. 5-6). Further, there was no record in the minutes that the Binding Letter Agreement was submitted to the Board of Selectmen on May 5, 2010, when the Closing Letter and State-Town Agreement were presented for ratification, or to the BOF and RTM.

In late November 2011, counsel for the Connecticut Department of Transportation ("CONNDOT") provided the Town with a copy of a letter dated July 15, 2010, from Attorney Richard H. Saxl to Denise Rodosevich, Esq., Counsel for CONNDOT,

attached hereto as Exhibit 1. The letter is a formal opinion by Attorney Saxl, then Town Attorney, affirming that the State of Connecticut and CONNDOT are "specifically relying on this letter from me as confirmation that the Binding Letter was duly authorized and executed and is binding on the Town of Fairfield." Notably, this letter was not disclosed by either Attorney Saxl or Mr. Flatto to our firm during the period in which we conducted our original legal analysis. The July 15, 2010 letter indicates that it is copied to the BOS, but we had not learned of this letter from any of the members of the BOS at the time, including Mr. James Walsh or Ms. Sherri Steeneck, nor was it mentioned in the several written communications by Mr. Flatto or in our conversation with Attorney Saxl.

On December 7, 2011, the Town received additional correspondence relating to the Binding Letter Agreement, which specifically addressed the July 15, 2010 letter. (See December 7, 2011 letter attached hereto as Exhibit 2). Attorney Saxl wrote a letter to the BOS dated December 7, 2011 in which he addressed his July 15, 2010 letter, and described concerns that CONNDOT had in June and July 2010 concerning the Binding Letter Agreement's enforceability. In his December 7, 2011 letter to the BOS, Attorney Saxl explains that he sent two letters to Attorney Rodosevich. The first was sent on June 10, 2010 and the second was sent on July 15, 2010. (An unsigned copy of the June 10, 2010 letter is attached hereto as Exhibit 3). Following a request from the Town on December 7, 2011, Attorney Saxl provided a copy of the June 10, 2010 letter. The June 10, 2010 letter stated Attorney Saxl's opinion and conclusion that the former First Selectman was authorized to enter into the Binding Letter Agreement by virtue of the 2003 Bond Resolution and the May 5, 2010 BOS resolution.

Attorney Saxl states in his December 7, 2011 correspondence to the BOS that, "In July of 2010, Ms. Rodosevich revisited the issue and asked me to amplify on the [June 10] letter. Ms. Rodosevich was pushing to get the letter signed, and we were both aware that the Guerrera contract had been awarded and was due to be signed by the Town shortly. In fact the Guerrera contract was signed by the Town on 7-16-10."

Attorney Saxl further explains, "Feeling considerable pressure to put this issue to rest yet again, I hastily reviewed, printed out, signed and faxed the 7-15-10 letter to Denise. After it was sent, I gave it to Ken Flatto for distribution. In retrospect I note that my letter contains an error which may explain why it was not given to the BOS." Attorney Saxl goes on to identify that the error concerned a factual assertion that Attorney Rodosevich of ConnDOT asked him to include in the letter. He states:

> As to the comment about the RTM, I believe I had told Denise Rodosevich that Ken had discussed the project update with the RTM on 5-24-10. I signed what Denise had asked me to sign, which included the words, "including the specific interpretation of the section 4.3 as set forth in the Binding Lettering [sic] during the

question and answer period. I do not believe that was an accurate statement. My recollection was that Ken alluded to it in general terms only.

In reviewing this a year and a half later, I acknowledge that I erred in my statement in the 7-15-10 letter regarding the RTM. As I said, I was under considerable pressure to get things finalized before awarding of the Guerrera contract on 7-16-10. I hastily signed off on the final version.

Letter Attorney Saxl to BOS dated December 7, 2011, Ex. 2.

On December 15, pursuant to the BOS's request to inquire further concerning Attorney Saxl's statements, undersigned counsel contacted Attorney Saxl by telephone to confirm certain facts relating to or set forth in the July 15, 2010 and December 7, 2011, letters. The following is a summary of several key facts discussed during that conversation.

1. Attorney Saxl explained that he authored two previous letters to CONNDOT concerning his opinion that the Town was authorized to enter into the Binding Letter Agreement. The first of these letters was written to Acting CONNDOT Commissioner Jeffery Parker on June 7 and the second was written on June 10, 2010. Exs. 3 & 4. The July 15, 2010 letter was written, upon the further insistence of Attorney Rodosevich, on the eve of the Town's awarding a contract to Guerrera Construction.

2. Attorney Saxl verified that he did not copy the BOS members, specifically members Walsh and Steeneck on his July 15, 2010 letter to Attorney Rodosevich. He indicated that he sent the letter to former First Selectman Flatto who said he would distribute it. Attorney Saxl could not provide me with details as to exactly when he learned that Selectmen Walsh and Steeneck never received copies of the July 15 letter.[1] Selectmen Steeneck and Walsh were likewise not provided with copies of the June 7 and 10 letters.

3. I asked Attorney Saxl whether and when he and former First Selectman Flatto discussed the factual inaccuracies in the

[1] Undersigned counsel contacted Selectman Walsh and former Selectman Steeneck to confirm that the June 10 and July 15 letters were provided to them before December 2011. Both indicated that they had not received either letter prior to receiving copies in or about December of this year. We note that both Attorney Saxl and Mr. Flatto confirmed that Selectmen Walsh and Steeneck were not provided with copies of either letter.

July 15, 2010 letter. Attorney Saxl indicated that he had spoken with Mr. Flatto about the factual inaccuracies after the letter was sent to Attorney Rodosevich on July 15, 2010, including the erroneous reference to the May 24 meeting. He told me that he did not share a draft of the July 15, 2010 letter with Mr. Flatto prior to signing it and sending it to Attorney Rodosevich. Attorney Saxl said that Mr. Flatto explained on or within a few days following July 15, 2010 that that the letter was inaccurate in referencing a discussion of "specific interpretation of section 4.3 as stated in the Binding Letter during the question an answer period" at the May 24 RTM meeting. While a member of the RTM had inquired generally about parking revenues during the May 24 meeting, Mr. Flatto told Mr. Saxl that the Binding Letter Agreement and the formula by which parking revenues would be shared between the Town and the state were not discussed.

4. I asked Attorney Saxl whether he and First Selectman Flatto discussed whether or not to alert Attorney Rodosevich of the factual inaccuracy. As discussed above, Attorney Saxl told me that he had discussed the topic with First Selectman Flatto, but that Attorney Saxl explained his view that he believed his overall conclusion on enforceability was correct, so he did not see a need at the time to notify Attorney Rodosevich of the error. He confirmed telling Mr. Flatto, consistent with his December 7, 2011 letter, specifically that Attorney Rodosevich asked him to include the reference to the May 24, 2010 RTM meeting. He further offered that former First Selectman Flatto did not ask him to correct the letter or send a clarification.

5. In light of the absence of the June and July 2010 letters from the documents provided to our firm this summer, I asked Mr. Saxl to identify any other documentation, including correspondence and emails that would reflect discussions between the Town and CONNDOT concerning the Binding Letter Agreement. Attorney Saxl explained that he was aware of another letter that had been sent by the Town to Acting CONNDOT Commissioner Jeffery Parker specifically concerning the Binding Letter Agreement in the May to July 2010 timeframe. We requested Attorney Saxl to review his file for that letter. [2]

Undersigned counsel also conferred with Mr. Flatto on December 19, 2011. Mr. Flatto confirmed that:

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[2] An unsigned copy of that letter provided by Attorney Saxl is attached hereto as Exhibit 4.

1. Neither he nor Attorney Saxl provided BOS members Walsh and Steeneck a copy of Attorney Saxl's July 15, 2010 letter to Attorney Rodosevich. Mr. Flatto explained that both he and Attorney Saxl agreed that it should not be circulated in light of factual inaccuracies. Mr. Flatto recalls that Attorney Saxl told him to hold the letter. According to Mr. Flatto, Attorney Saxl knew if the July 15, 2010 letter was distributed it would "raise questions". He noted that the BOS did not, at that time, have the Binding Letter Agreement. Mr. Flatto confirmed that he did not provide the Binding Letter Agreement to any other member of the BOS or to any Town board until he provided a copy of the Binding Letter Agreement to Sherri Steeneck in or about May of 2011.[3]

2. Mr. Flatto confirmed that he initiated a discussion with Attorney Saxl concerning the factual inaccuracy, namely the reference to the May 24, 2010 RTM discussion. Mr. Flatto said that he was "95% sure" that he learned of the error after the letter was sent to Attorney Rodosevich. In our review of the facts, we requested from the Town and obtained some emails from Mr. Flatto and Attorney Saxl. Among these was an email to both Attorneys Saxl and Rodosevich dated July 14, 2010, the day before the letter was sent. [4] Mr. Flatto stated that he discussed the letter with Attorney Saxl on or about July 15, 2010, and identified that the May 24, 2010 RTM reference was not accurate. According to Mr. Flatto, Attorney Saxl explained that Attorney Rodosevich had

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[3] Ms. Steeneck explained that she had not received a copy of the Binding Letter Agreement until some time in June or July 2011, when it was provided to the current First Selectman.

[4] At 3:43 p.m. on July 14, 2010, Mr. Flatto wrote:
"Dick, Denise, my goodness:
This month old question about the validity of the letter re the reimbursement of the annual bond from parking revenues has been resolved and is beyond reproach. This really has been put to bed and I will not/can not take further unneeded actions which will hold this project up. First of all, when the Attorney for a Municipality has certified to the State DOT in writing that the "letter" is legally binding upon [sic] town .. that should be sufficient for you. Second when a town legally adopted resolution passed by both the BOS in 2010 and by the RTM and BOF in a prior year specifically stated "the First Selectman is authorized to apply for an accept any available state or federal grant in aid for the financing of the Project" and further "to take all necessary action on behalf of town to receive such grants including executing any necessary documents" .. this gives me as First Selectman complete authority to execute the letter regarding defining debt payments against parking revenues as signed with the DOT. This was part of the resolution the BOS reauthorized on May 5, 2010. Why are we belaboring this? I have a $20 million dollar construction contract that the town is awarding this week (partly based on the fact that we have a State Aid Agreement already). I would like to go ahead with this tomorrow. Ken"
Email Ken Flatto to Richard Saxl and Denise Rodosevich, July 14, 2010, 3:43 p.m.
(See Exhibit 5 attached hereto.)

provided him specific language to include in the letter, including the reference to the discussion at the RTM meeting and the phrase indicating the full BOS is carbon copied, but that he had been rushed to provide it to the State in light of the bidding process. Notably, Mr. Flatto did not make reference to any discussion at the May 24 RTM meeting in his July 14, 2010 email to Attorneys Saxl and Rodosevich.

3. I asked Mr. Flatto whether he and Attorney Saxl discussed notifying Attorney Rodosevich of the errors in the letter. Although he qualified his response by stating that he could not swear to it, Mr. Flatto initially recalled asking Attorney Saxl to contact Attorney Rodosevich about the error, and offered to contact the acting CONNDOT Commissioner to explain the error. Mr. Flatto confirmed that he never contacted the Acting Commissioner or anyone at CONNDOT concerning the error. Mr. Flatto called me after my telephone conversation with him, and left me a voice message clarifying his recollection that he did not instruct Attorney Saxl to contact Ms. Rodosevich, but expected that Attorney Saxl would have done so.

4. Mr. Flatto provided his views on the history of the MetroCenter Project, his interpretation of various documents and his views on the bona fides of the deal. We previously included Mr. Flatto's written explanations in our original September 30, 2011 analysis. We also include Mr. Flatto's explanation to the BOS dated December 7, 2011. While it is not germane to our legal analysis, we are including it as part of this supplemental analysis. (See Exhibit 6 attached hereto.)

**Legal Analysis**

Under Connecticut law, agreements that are made by municipal officials without proper authority are void. Connecticut courts have held that those who contract with a municipality "are charged with notice of the extent of ... the powers of municipal officers and agents with whom they contract [and] ... it follows that if the agent had in fact no power to bind the municipality, there is no liability on the express contract..." Keeney at 148. See also Sheehan at 526 ("Contracts beyond the powers of a municipality are void.")

Since the powers of a municipal corporation are wholly statutory, every person who deals with such a body is bound to know the extent of its authority and the limitations of its powers."); Turney v. The Town of Bridgeport, 55 Conn. 412, 418 (1887) ("The rules of law, declaring that an agent of a town must pursue his authority strictly; that if he goes beyond his written authority his act is not valid; that

persons dealing with such agents must look to the corporate act of the town as the source and limit of the powers of the agent").

Our Supreme Court has found that, notwithstanding the rule providing that agreements entered beyond the capacity of municipal officials are void, ratification can occur when a board fails "to object when the unauthorized actions are fully disclosed to the board at a meeting of that board." Keeney v. Town of Old Saybrook 237 Conn. 135 (1996) at 149, n. 13 citing Blakeslee v. Board of Water Commissioners, 121 Conn. 163, 178-79 (1936) . Our Supreme Court has also held that where a municipality accepts the benefit of a contract, it may likewise be estopped from claiming it was not executed according to law. See Pepe v. City of New Britain, 203 Conn. 281, 293 (1987) (citing cases).

The Town's obligations under the Binding Letter Agreement, if any, must be viewed against a complex factual and legal backdrop. In our September 30, 2011 analysis, we concluded that the Binding Letter Agreement was not approved by either the BOS or any other Town body, and was not made known to the BOS at the May 5, 2010, meeting or thereafter sufficiently for the BOS's inaction to be deemed a ratification. We have learned of no facts since then that would alter our conclusion.

Attorney Saxl's July 15, 2010 letter to CONNDOT states that BOS's May 5, 2010 resolution would authorize the First Selectman to enter into the Binding Letter Agreement since it was related to the other two 2010 agreements, and further states that the Town "is appending" the Binding Letter Agreement to the State Town Agreement, presumably to underscore its relatedness. But the Binding Letter Agreement was not appended to the State-Town Agreement when it was presented to the BOS, BOF and RTM in or about May 2010. The letter further states that former First Selectman Flatto "reviewed and discussed the terms of the State Agreement and all associated documents with the Town, including describing the specific interpretation of section 4.3 as set forth in the Binding Letter during the question and answer period, at the Representative Town Meeting on May 24, 2010." We now know that this is not true, and none of the town boards saw the Binding Letter Agreement. Apart from that, we have not seen or heard evidence that the relevant boards were sufficiently informed of the effect of the Binding Letter Agreement for them to have ratified it. The boards knew of the provisions of the 2003 Tri-Partite Agreement that allowed CONNDOT to pay the parking lot operating and maintenance costs before turning over any excess revenues to the Town. There is no indication, however, that the Town boards learned that the State's debt service on the $19.4 million in bonds would be deemed operating and maintenance costs. We therefore do not believe that the Town ratified Mr. Saxl's interpretation of Mr. Flatto's authority to execute the Binding Letter Agreement, absent an explicit review of its terms.

For these reasons, we do not believe that a court would find that the Binding Letter Agreement was ratified in 2010 by the BOS, BOF and RTM, since none of these

bodies had full notice of former First Selectman Flatto's signing the Binding Letter Agreement or an opportunity to ratify it by conduct or inaction following such notice.

It is a different question, however, whether the Town would be estopped from now claiming that the Binding Letter Agreement is void. The State exercised substantial diligence in verifying that the Town was bound by that Agreement, by specifically requesting and obtaining a formal opinion letter from the Town Attorney assuring the State that Mr. Flatto was indeed authorized to enter into that agreement. In response, Attorney Saxl sent a letter dated July 15, 2010, to Attorney Denise Rodosevich, Counsel for CONNDOT, in which he represented that all proper approvals had been obtained and that Mr. Flatto was duly authorized to enter into the Agreement. Attorney Saxl concludes by saying that Mr. Flatto, "is fully empowered by both the Town charter and the Board of Selectmen votes of 2003 and May 5, 2010 to enter into and execute the [Agreement] relating to interpretation of section 4.3 of the Tripartite Agreement".

We do note that the State, as a contracting party which provided $19.4 million in financing, did so expressly in reliance on Attorney Saxl's letter, which including at the State's specific insistence Attorney Saxl's representation (now known to be incorrect) concerning the May 24, 2010 RTM meeting. We understand that, at this time the Town has made expenditures against the $19.4 million, and the State has paid or is in the process of paying the Town this money on a reimbursement basis. Further, the Project is substantially completed. The timing of Attorney Saxl's letter, its content and circumstances surrounding its drafting demonstrate that the State would not have paid or obligated itself to pay the $19.4 million to the Town without Attorney Saxl's letter. We also understand that the State has recently tentatively committed to paying an additional $2-3 million to the Town in furtherance of completing the project. There is little doubt that the State is providing this additional funding on the expectation that the Town will comply with the Binding Letter Agreement, as well as the Closing Agreement and State Town Agreement.

The State's reliance on Attorney Saxl's letter and on the conduct of the Town in substantially completing the Project using State Funds, creates a compelling case in favor of the State were the Town to sue the State for parking proceeds under the original revenue sharing formula. The State certainly regards the Binding Letter Agreement as enforceable. A court of law could estop the Town from now claiming that the Binding Letter Agreement is a nullity. The State may attempt to advance an argument that estoppel should render the Binding Letter Agreement enforceable, since the Town bodies approved the new funding. A claim by the Town at this time to disavow the Binding Letter Agreement could jeopardize the receipt of additional moneys from the State, including the balance of the $19.4 million and the $2-3 million in additional money that has been recently pledged by the State to the Town, as well as any future intergovernmental money that the Town may need from the State.

Please feel free to contact me about this letter and our analysis.

Very truly yours,

Richard F. Vitarelli/dmb

Richard F. Vitarelli

# EXHIBIT 1

# Town of Fairfield

**Richard H. Saxl**
**Town Attorney**

**Fairfield, Connecticut 06824**

July 15, 2010

Denise Rodosevich, Esq., Counsel
CT Department of Transportation
2800 Berlin Turnpike
Newington, CT 06111

Re: **Binding Letter Agreement**

Dear Attorney Rodosevich:

You have asked for further clarification regarding the Binding Letter between the Town of Fairfield and the Connecticut Department of Transportation (CONNDOT) regarding the agreed to interpretation of section 4.3 of the Tri-party Agreement dated March 31, 2003. This Binding Letter was executed by Kenneth A. Flatto, First Selectman on behalf of the Town of Fairfield on April 27, 2010 and by Deputy Commissioner Jeffrey Parker on April 28, 2010. The Binding Letter was an integral part of the Closing documents executed this April, 2010 between the Town and CONNDOT, which also included a State Agreement between CONNDOT and Town of Fairfield dated April, 2010, granting the Town up to $19.4 million for this Project, enabling the third train station Project to move forward to completion pursuant to the Tripartite Agreement of 2003.

The Board of Selectmen is the governing body of town fully empowered to enter into all agreements and contracts for the Town pursuant to section 6.1 of the town charter, and the Board of Selectmen and the Charter have also authorized the First Selectman to enter into and execute all contracts on behalf of Town. The Board of Selectman on May 5, 2010 adopted a resolution, which I have also sent to you, which states in part: "the Board of Selectmen hereby affirm the statutory executive authority of the First Selectman to enter into and execute documents on behalf of the Town of Fairfield". I affirm that the intent of this wording was to include all documents relating to the Closing between the Town and CONNDOT, including the Binding Letter aforementioned. This same Board of Selectmen resolution goes on to further state, in part, "and that the Board of Selectmen ratify and approve ... the State Aid Agreement among and between the Town of Fairfield and the State of Connecticut Department of Transportation, together with any and all associated exhibits, deeds", etc. This language in the resolution specifically refers to the State Agreement with the Town for up to $19.4 million which was discussed at this meeting along with the other associated documents. The motion approved by the Board of Selectmen at this meeting further went on to state that the Board of Selectmen "further affirm that all such actions were, in fact, fully authorized pursuant to the Tripartite Agreement dated March 31, 2003 between CONNDOT and the Town of Fairfield and Blackrock Realty LLC and pursuant to

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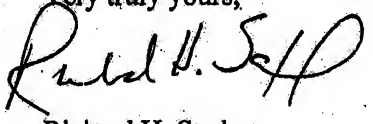
the associated enabling Bond resolution approved by the Board of Selectmen and all required appropriate town bodies, including the RTM."

I affirm that the Binding Letter regarding the interpretation of section 4.3 of the Tri-party Agreement is considered by the Town to be one of the documents which the Selectmen voted to affirm and ratify herein through the aforementioned resolution authorizing the First Selectman to enter into all such documents related to the third train station project and the Tripartite Agreement. This Binding Letter is part and parcel of the closing documents between the Town and CONNDOT in this matter, the execution of which was a condition of the Town receiving the State Agreement for up to $19.4 million and therefore, the Town is appending this Binding Letter as a document and exhibit to the State Agreement with the Town for $19.4 million, which is also hereby known and defined within the Selectmen's resolution as "the State Aid Agreement among and between the Town of Fairfield and the State of Connecticut Department of Transportation". Additionally, the Selectmen's resolution adopted on May 5, 2010 specifically ratified and affirmed the specific terms of the 2003 Resolution, adopted by the Board of Selectmen and then the Representative Town Meeting on January 23, 2003, as follows, "the First Selectman is hereby authorized to apply for and accept any available State (or federal) grant (specifically now known as the Agreement between the Town of Fairfield and State of Connecticut Department of Transportation for up to $19.4 million) in aid of the financing of the Project and to take all action necessary and proper in connection therewith and authorized to take all necessary action on behalf of Town to receive such grants including executing any necessary documents".

By these resolutions, I fully affirm that the Board of Selectmen has indeed authorized, on behalf of the Town of Fairfield, that the First Selectman execute on behalf of the Town of Fairfield all documents necessary to discharge and complete all mattes relating to the train station Project, including the Binding Letter interpreting section 4.3 of the Tripartite Agreement executed between the First Selectman and Deputy Commissioner Parker. I further affirm that the First Selectman reviewed and discussed the terms of this State Agreement and all associated documents with the Town, including describing the specific interpretation of section 4.3 as set forth in the Binding Letter during the question and answer period, at the Representative Town Meeting on May 24, 2010. Finally, I reiterate that Kenneth A. Flatto, First Selectman of the Town of Fairfield, is fully empowered by both the Town charter and the Board of Selectmen votes of 2003 and of May 5, 2010 to enter into and execute the Binding Letter agreement relating to interpretation of section 4.3 of the Tripartite Agreement.

I understand that the State of Connecticut and CONNDOT are specifically relying on this letter from me as confirmation that the Binding Letter was duly authorized and executed and is binding on the Town of Fairfield.

Very truly yours,



Richard H. Saxl
Town Attorney

CC: Fairfield Board of Selectmen

# EXHIBIT 2

To the Board of Selectmen:

I am writing to give you my thoughts concerning two letters that I sent ConnDOT Staff Attorney Denise Rodosevich in 2010. On June 10, 2010, I sent a letter at her request stating that the first Selectman was authorized to sign the Binding Letter regarding the Third Railroad station project. In July of 2010, Ms. Rodosevich revisited the issue and asked me to amplify on the letter. Ms. Rodosevich was pushing me to get the letter signed, and we were both aware that the Guerrera construction contract had been awarded and was due to be signed by the Town shortly. In fact the Guerrera contract was signed by the Town on 7-16-10.

Feeling considerable pressure to put this issue to rest yet again, I hastily reviewed, printed out, signed and faxed the 7-15-10 letter to Denise. After it was sent, I gave it to Ken Flatto for distribution. In retrospect I note that my letter contains an error which may explain why it was not given to the BoS.

As to the BoS approval on 5-5-10, I am aware that Ken had discussed the general concept of the 2010 documents with the BoS. I think it was and is accurate for the letter to say that "the Town" considers the Binding Letter to be binding as the BoS re-affirmed his power under the 2003 agreement on 5-5-10.

As to the comment about the RTM, I believe I had told Denise Rodosevich that Ken had discussed the project update with the RTM on 5-24-10. I signed what Denise asked me to which included the words "including the specific interpretation of the section 4.3 as set forth in the Binding Lettering during the question and answer period..." I do not believe that was an accurate statement. My recollection was that Ken alluded to it in general terms only.

In reviewing this a year and a half later, I acknowledge that I erred in my statement in the 7-15-10 letter regarding the RTM. As I said, I was under considerable time pressure to get things finalized before the awarding of the Guerrera contract on 7-16-10. I hastily signed off on the final version.

The next sentence from the 7-15-10 letter reads: "Finally, I reiterate that Kenneth A. Flatto, First Selectman of the Town of Fairfield, is fully empowered by both the Town charter and the Board of Selectmen votes of 2003 and of May 5, 2010 to enter into and execute the Binding Letter agreement relating to interpretation of section 4.3 of the Tripartite Agreement." Any lack of a specific discussion on any topic with the RTM, including the Binding Letter, would not and does not change this statement which I believe was and is accurate.

Richard H. Saxl

12-7-11

# EXHIBIT 3

June 10, 2010

Denise Rodosevich, Esq.
Department of Transportation
2800 Berlin Turnpike
Newington, CT 06111

Re: **Binding Letter Agreement**

Dear Attorney Rodosevich:

You have requested that I review a certain Binding Letter Agreement between the Town of Fairfield and the Connecticut Department of Transportation regarding Interpretation of Section 4.3 of the Tri-party Agreement dated March 31, 2003. The Binding Letter was executed by Kenneth A. Flatto, First Selectman of the Town of Fairfield on April 27, 2010 and by you on April 28, 2010. See Exhibit A.

On May 5, 2010, the Fairfield Board of Selectmen passed a resolution stating in part resolved that the Board of Selectmen hereby re-affirm the statutory executive authority of the First Selectman to enter into and execute all documents relating to the closing and State Aid Agreement with the State on behalf of the Town of Fairfield. Additionally a certain bond resolution approved by the Board of Selectmen, all required town bodies including the RTM on January 28, 2003 states in part "the First Selectman is hereby authorized…to take all necessary action on behalf of the Town to receive [state or federal] grants including executing any necessary documents to cause the Town to expend such grants." See Exhibit B.

I have reviewed the Binding Letter, the January 28, 2003 resolution together with the May 5, 2010 resolution of the Board of Selectman. I am of the opinion that Kenneth A. Flatto, First Selectman of the Town of Fairfield, was fully empowered by the Board of Selectmen to execute the Binding Letter Agreement relating to Section 4.3 of the Tri-party Agreement.

Very truly yours,

Richard H. Saxl

RHS/nak
Enc.

# EXHIBIT 4

June 7, 2010

Jeffrey Parker, Deputy Commissioner
Department of Transportation

Hartford, CT

Re: **Binding Letter Agreement**

Dear Mr. Parker:

You have requested that I review a certain Binding Letter Agreement between the Town of Fairfield and the Connecticut Department of Transportation regarding interpretation of Section 4.3 of the tri-parte agreement dated March 31, 2003. The Binding Letter was executed by Kenneth A. Flatto, First Selectman of the Town of Fairfield on April 27, 2010 and by you on April 28, 2010.

On May 5, 2010, the Fairfield Board of Selectmen passed a resolution stating in part "resolved that the Board of Selectmen hereby re-affirm the statutory executive authority of the First Selectman to enter into and execute documents on behalf of the Town of Fairfield." Additionally a certain bond resolution approved by the Board of Selectmen, all required town bodies including the RTM on January 28, 2003 states in part "the First Selectman is hereby authorized…to take all necessary action on behalf of the Town to receive {state or federal} grants including executing any necessary documents to cause the Town to expend such grants."

I have reviewed the Binding Letter and the January 28, 2003 resolution together with the May 5, 2010 resolution of the Board of Selectman. I am of the opinion that Kenneth A. Flatto, First Selectman of the Town of Fairfield was fully empowered to execute the Binding Letter Agreement relating to Section 4.3 of the tri-parte agreement.

Very truly yours,

Richard H. Saxl

RHS/nak
Enc.
cc: Denise Rodosovich, Esq.

# EXHIBIT 5

**From:** "Flatto, Ken" [mailto:kflatto@town.fairfield.ct.us]
**To:** "Saxl, Richard-1" <RHSaxl@sbcglobal.net>
**CC:** "Denise Rodosevich" <denise.rodosevich@ct.gov>
**Created:** 7/14/2010 4:43:55 PM
**Subject:** for DOT

Attachments:

Dick, Denise, my goodness:
This month old question about the validity of the letter re the reimbursement of the annual bond from parking revenues has been resolved and is beyond reproach. This really has been put to bed and I will not/can not take further unneeded actions which will hold this project up. First of all, when the Attorney for a Municipality has certified to the State DOT in writing that the "letter" is legally binding upon town..that should be sufficient for you. Second when a town legally adopted resolution passed by both the BOS in 2010 and by the RTM and BOF in a prior year specifically stated "the First Selectman is authorized to apply for and accept any available state or federal grant in aid for the financing of the Project" and further "to take all necessary action on behalf of town to receive such grants including executing any necessary documents"...this gives me as First Selectman complete authority to execute the letter regarding defining debt payments against parking revenues as signed with the DOT. This was part of the resolution the BOS reauthorized on May 5, 2010.
Why are we belaboring this?. I have a $20 million dollar construction contract that town is awarding this week (partly based upon the fact that we have a State Aid Agreement already).
I would like to go ahead with this tomorrow.
Ken

# EXHIBIT 6

Dear Mike, Cristin, and Jim, as
Members of the Board of Selectmen

re: Meeting of December 7, 2011

I am very happy that the historic train station project is substantially complete as significant benefits will accrue to our community and the region. As a new Board, I'd like to give you personal information to help explain the 2010 accords which saved the Fairfield Metro project from collapse and reduced the town's liabilities. Much of this was provided to the BOF and RTM this summer, but I'd like to try to help explain any remaining confusion.

We all share a basic desire to do what is best for the town. The negotiations and agreements entered into in 2010 were made solely to benefit and help our town. They restarted the Fairfield Metro Center Project, which had been mired in foreclosure and pending litigation.. The BOS discussed some of these issues in executive sessions in 2008, 2009 and early 2010. The state, the private owner and the town resolved all remaining issues based on the intent and workings of the 2003 Tripartite Agreement. These additional accords saved the Town over $15 million in contractual obligations assumed in 2003 relating to constructing the public parking lot and associated cleanup, utilities, grading, retaining walls, and required offsite traffic improvements. The 2010 accords eliminated the risk of costly litigation between parties. One small example is that the bank filed a suit that affected the property the town had rights to for public parking.

In working to achieve the goals of this project, my Administration obtained over $30 million in financial benefits and grants to complete this project. This $30 million was made up of the $19.1 state grant, $5.2 million received from the private developer, the elimination of town's 2003 obligation to repay the state $5 million for road construction loan costs, and $3.5 million in federal grants that I obtained for off-site traffic improvements. We had to react to major unforeseen conditions, from permitting delays to cost escalations, to lawsuit risks, to project issues not anticipated in the 2003 Agreement.

The 2010 Project budget estimate of $29 million was prepared by consultants for the town and the private developer and reviewed, approved and reduced to writing by DOT engineers. The town portions of the work remaining required a town cost of over $15 million, well beyond what was anticipated in 2003 but that risk was adopted in the town Agreement in 2003. At my urging and cajoling, all parties agreed that the town would not incur new funding for any part of this $29 million beyond the town's $5 million in issued bonds that remained available. Attorney Saxl explained the First Selectman could not authorize new bonds but had authority from the 2003 resolutions to sign off on any state grant and the closing document we negotiated since no new town expenditures were required.. We absolutely believed we had eliminated any town cost exposure when we presented the finished arrangements to town bodies for their information.

During negotiations, it became clear to parties that the town was getting the best of discussions, as the state and the private developer committed to ante up significant new funding while the town saved over $5 million by eliminating the 2003 provision requiring town pay back of road construction funds, now to be provided free. The DOT started asking for an additional town contribution. One idea they raised was to take our future parking revenues. Upon reviewing the original Agreement's parking revenue language, the negotiators realized that the state had an apparent right to apply their new "expenses related to the parking areas and their improvements" against future parking revenues before the town got $300,000 per annum of any profit. Dick Saxl and I helped write the 2003 language and we believed this was a correct interpretation. The DOT decided to take this approach. They dropped the idea of asking the town to give up the rights to future net profits after state costs. This was not written up to be approved or signed by the parties as it was determined to be an existing inherent right for DOT.

The town no longer has to repay the state reimbursement for the roadway construction loan and interest which have risen to over $5 million. Thus in real net terms, no future revenue steam was given away. In fact, the town now has this guaranteed savings of more than $5 million plus any proceeds from parking revenue profits, as compared to a lower $3 million net amount town boards had assumed in 2003 ($6 million in parking revenues, less $3 million state loan repayment projected). In addition, I still feel that Fairfield will ultimately receive a chunk of future $300,000 net profit. This is based on my assumptions that the parking lot will be over sold and that state cost to operate the lot will be low. I understand some of you disagree on this one point, but either way, the town is financially better off in 2010 than 2003.

The parties completed negotiations and instructed attorneys to draw up the two agreed upon negotiated documents: the state grant agreement and the private developer Closing letter. These were prepared, circulated, and signed off in March 2010. (note - Closing letter signing was delayed until April waiting for TD Banknorth releases and the private developer's funds). It was a very exciting hectic time as the Project was finally resuscitated. Days before the late April announcement, Dick called

to say he got a call from an attorney at DOT requesting that I sign a new letter never discussed during negotiations. I was surprised and asked why. He indicated they wanted more assurance on their future costs being reimbursed from parking fees. I suggested they reword their grant agreement if they wanted language about that and he asked them. They said it would delay things. Based on their requested letter's content as a clarification to the existing 2003 Agreement, I signed it as requested. This letter was never intended as some secret deal but as a security statement to the DOT as to our mutual understanding of their existing rights. I did not think it made sense to give it out to the Boards just as I did not tell the Boards we gained $5 million in future revenue due to no longer repaying road costs. I just did not believe these things affected what we were announcing. In retrospect, I wish I had cleared up this confusion earlier to show we gained from 2003. This letter was not related to the Project construction before us in 2010.

My Administration presented all the negotiated accords in 2010 to town Boards and, as you know, the BOS approved resolutions in 2010 regarding those accords. When presenting costs of construction, I did tell the Boards there could be some possible financial risk, as meeting minutes show, and I said we would manage any such issue if it came up. I can understand the surprise and frustration that the project ran over budget due to additional polluted materials having to be removed from the shoreline after I left office. I would have sought to do everything possible to reduce or eliminate the town exposure, as the First Selectman has.

I and others in my Administration took every action we could to get the Project back on track for the town benefit. We did much to save the town significant money and to allow the town to prosper in the future from this project and from so many others. I started this train station public plan in 1999 when we convinced the state to go forward. I worked my very hard for Fairfield and thankfully accomplished many major achievements. I have had 16 years of service to the town with hundreds of negotiations and contracts. The accords in 2010 were completed solely to protect our town's interest and for the benefit of the public and for our community. Thank you.

Yours truly,

Kenneth Flatto